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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/927,452	08/13/2001	Michelle Anderson	723-1154	6252
27562	7590	07/26/2007		
NIXON & VANDERHYE, P.C. 901 NORTH GLEBE ROAD, 11TH FLOOR ARLINGTON, VA 22203			EXAMINER GREENE, DANIEL LAWSON	
			ART UNIT 3694	PAPER NUMBER
			MAIL DATE 07/26/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Office Action Summary**

Application No.

09/927,452

Applicant(s)

ANDERSON ET AL.

Examiner

Daniel L. Greene Jr.

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 25 April 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-36 is/are pending in the application.
- 4a) Of the above claim(s) 7-18 and 25-36 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6 and 19-24 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

1. Claims 1-36 are pending. Claims 7-18 and 25-36 were withdrawn in the previous Office action as being directed to a nonelected invention. Claims 1 and 19 were amended in the response received 4/25/2007.

### ***Response to Amendment***

2. There was a typographical error in section 13 of the previous Office action wherein the last two numbers of the reference were transposed, however the name and PTO-892 reflected the PROPER reference, i.e. Miller. Applicant was correct in responding to the proper Miller Reference 4,882,475.

3. The drawings received on 4/25/2007 appear acceptable in overcoming the objection of section 2 of the previous Office action mailed 1/25/2007. Accordingly, said objection of said section is hereby withdrawn.

4. Applicant submitted a Substitute Specification on 4/25/2007. This new specification is objected to because it does not conform to current USPTO policies per 37 CFR 1.77(b). For example, the new specification fails to set forth a brief summary of the invention. It appears applicant is attempting to improperly combine the background and Summary of the invention. Appropriate correction is required.

5. For applicant's convenience the Examiner offers the following information.

### ***Specification***

The following guidelines illustrate the preferred layout for the specification of a utility application. These guidelines are suggested for the applicant's use.

### Arrangement of the Specification

As provided in 37 CFR 1.77(b), the specification of a utility application should include the following sections in order. Each of the lettered items should appear in upper case, without underlining or bold type, as a section heading. If no text follows the section heading, the phrase "Not Applicable" should follow the section heading:

- (a) TITLE OF THE INVENTION.
- (b) CROSS-REFERENCE TO RELATED APPLICATIONS.
- (c) STATEMENT REGARDING FEDERALLY SPONSORED RESEARCH OR DEVELOPMENT.
- (d) THE NAMES OF THE PARTIES TO A JOINT RESEARCH AGREEMENT.
- (e) INCORPORATION-BY-REFERENCE OF MATERIAL SUBMITTED ON A COMPACT DISC.
- (f) BACKGROUND OF THE INVENTION.
  - (1) Field of the Invention.
  - (2) Description of Related Art including information disclosed under 37 CFR 1.97 and 1.98.
- (g) BRIEF SUMMARY OF THE INVENTION.
- (h) BRIEF DESCRIPTION OF THE SEVERAL VIEWS OF THE DRAWING(S).
- (i) DETAILED DESCRIPTION OF THE INVENTION.
- (j) CLAIM OR CLAIMS (commencing on a separate sheet).
- (k) ABSTRACT OF THE DISCLOSURE (commencing on a separate sheet).
- (l) SEQUENCE LISTING (See MPEP § 2424 and 37 CFR 1.821-1.825. A "Sequence Listing" is required on paper if the application discloses a nucleotide or amino acid sequence as defined in 37 CFR 1.821(a) and if the required "Sequence Listing" is not submitted as an electronic document on compact disc).

### Content of Specification

- (a) Title of the Invention: See 37 CFR 1.72(a) and MPEP § 606. The title of the invention should be placed at the top of the first page of the specification unless the title is provided in an application data sheet. The title of the invention should be brief but technically accurate and descriptive, preferably from two to seven words may not contain more than 500 characters.
- (b) Cross-References to Related Applications: See 37 CFR 1.78 and MPEP § 201.11.
- (c) Statement Regarding Federally Sponsored Research and Development: See MPEP § 310.

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- (d) The Names Of The Parties To A Joint Research Agreement: See 37 CFR 1.71(g).
- (e) Incorporation-By-Reference Of Material Submitted On a Compact Disc: The specification is required to include an incorporation-by-reference of electronic documents that are to become part of the permanent United States Patent and Trademark Office records in the file of a patent application. See 37 CFR 1.52(e) and MPEP § 608.05. Computer program listings (37 CFR 1.96(c)), "Sequence Listings" (37 CFR 1.821(c)), and tables having more than 50 pages of text were permitted as electronic documents on compact discs beginning on September 8, 2000.
- (f) Background of the Invention: See MPEP § 608.01(c). The specification should set forth the Background of the Invention in two parts:
  - (1) Field of the Invention: A statement of the field of art to which the invention pertains. This statement may include a paraphrasing of the applicable U.S. patent classification definitions of the subject matter of the claimed invention. This item may also be titled "Technical Field."
  - (2) Description of the Related Art including information disclosed under 37 CFR 1.97 and 37 CFR 1.98: A description of the related art known to the applicant and including, if applicable, references to specific related art and problems involved in the prior art which are solved by the applicant's invention. This item may also be titled "Background Art."
- (g) Brief Summary of the Invention: See MPEP § 608.01(d). A brief summary or general statement of the invention as set forth in 37 CFR 1.73. The summary is separate and distinct from the abstract and is directed toward the invention rather than the disclosure as a whole. The summary may point out the advantages of the invention or how it solves problems previously existent in the prior art (and preferably indicated in the Background of the Invention). In chemical cases it should point out in general terms the utility of the invention. If possible, the nature and gist of the invention or the inventive concept should be set forth. Objects of the invention should be treated briefly and only to the extent that they contribute to an understanding of the invention.
- (h) Brief Description of the Several Views of the Drawing(s): See MPEP § 608.01(f). A reference to and brief description of the drawing(s) as set forth in 37 CFR 1.74.

- (i) Detailed Description of the Invention: See MPEP § 608.01(g). A description of the preferred embodiment(s) of the invention as required in 37 CFR 1.71. The description should be as short and specific as is necessary to describe the invention adequately and accurately. Where elements or groups of elements, compounds, and processes, which are conventional and generally widely known in the field of the invention described and their exact nature or type is not necessary for an understanding and use of the invention by a person skilled in the art, they should not be described in detail. However, where particularly complicated subject matter is involved or where the elements, compounds, or processes may not be commonly or widely known in the field, the specification should refer to another patent or readily available publication which adequately describes the subject matter.
- (j) Claim or Claims: See 37 CFR 1.75 and MPEP § 608.01(m). The claim or claims must commence on separate sheet or electronic page (37 CFR 1.52(b)(3)). Where a claim sets forth a plurality of elements or steps, each element or step of the claim should be separated by a line indentation. There may be plural indentations to further segregate subcombinations or related steps. See 37 CFR 1.75 and MPEP § 608.01(i)-(p).
- (k) Abstract of the Disclosure: See MPEP § 608.01(f). A brief narrative of the disclosure as a whole in a single paragraph of 150 words or less commencing on a separate sheet following the claims. In an international application which has entered the national stage (37 CFR 1.491(b)), the applicant need not submit an abstract commencing on a separate sheet if an abstract was published with the international application under PCT Article 21. The abstract that appears on the cover page of the pamphlet published by the International Bureau (IB) of the World Intellectual Property Organization (WIPO) is the abstract that will be used by the USPTO. See MPEP § 1893.03(e).
- (l) Sequence Listing. See 37 CFR 1.821-1.825 and MPEP §§ 2421-2431. The requirement for a sequence listing applies to all sequences disclosed in a given application, whether the sequences are claimed or not. See MPEP § 2421.02.

### ***Response to Arguments***

6. Applicant's arguments, see pages 13 and 14, filed 4/25/2007, with respect to the rejections set forth in sections 6.b. and 6.g. of the previous Office action mailed

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1/25/2007 have been fully considered and are persuasive. Accordingly, the rejections of ONLY said sections 6.b. and 6.g. have been withdrawn.

7. Applicant's arguments filed 4/25/2007 surrounding the other rejections of said Office action have been fully considered but they are not persuasive. Accordingly said rejections are maintained and incorporated herein by reference.

8. Regarding sections 5 and 6.a. of said previous Office action, Applicant's arguments have NOT overcome the Examiners concern for what all is meant and encompassed by the term "M". For example, Applicant failed to discuss how to determine the value of M when  $N = 1$ . Further the specification as filed, page 4 line 10 refers to processing "the order using a different format (e.g., using a different number) that what is presented in the order itself" so the specification allows for M to be something other than a number.

9. Regarding sections 6.c.-6.f. it is noted that Applicant provided no specific argument for, nor support in opposition of, the Examiners rejections. IT is not seen wherein the amendments to the claims have overcome the Examiners contentions. Accordingly said rejections are maintained and it is requested that Applicant provide more succinct information as to where support (in the application as filed) can be found for each and every one of the Examiners contentions. Again, the generality of the claim language does not define away from the Examiners interpretation of the claim language.

10. Regarding section 7 of the previous Office action (35 U.S.C. 101), Applicant's amendments to the preamble of claims 1 and 19 do NOT overcome the Examiners contentions because, for example, the recitation computer-implemented...tangibly

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stored as instructions on a computer-readable storage medium has not been given patentable weight because the recitation occurs in the preamble. A preamble is generally not accorded any patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone. See *In re Hirao*, 535 F.2d 67, 190 USPQ 15 (CCPA 1976) and *Kropa v. Robie*, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951).

11. Regarding section 9 of the previous Office action (35 U.S.C. 102), Applicant's arguments (pages 14 and 15) are unpersuasive as applicant has not shown that the references do not teach what the examiner has stated they teach. Further, the APA does indeed "process the order using M unit(s) as a representation of the N items" AND "a processor for processing the order" because, for example, a truck driver (processor) will deliver (i.e. process) one package (M unit) from the vendor to the client wherein that one package contains N items. To help Applicant understand the Examiners logic, lets look at another analogy. Let's say a person orders a gross of bottle rockets. Now there are 12 packs of 12 bottle rockets in a gross to equal 144 bottle rockets. The bottle rockets come "bundled" in one (1) gross, but the actual number is 144 bottle rockets. Applicant alleges that the specification as filed page 2 lines 10-19 makes clear how the current invention distinguishes over the prior art, the Examiner disagrees. In fact it appears that said citation actually supports the Examiners contention that such is true because of the telling statement at the beginning of said citation "In other scenarios"



which appears to indicate that there is at least one instance of the method disclosed as the Examiner has explained as well as OTHER situations as well.

12. Regarding section 12 of the previous Office action (35 U.S.C. 103), Applicant's argument on page 16 is unpersuasive as the specification is replete with terms and phrases such as "alternatively, the orders may be received by the system via manual input by the vendors personnel." (p7, 17-8) see also page 8 lines 15-17. Applicant cannot properly argue that the method is limited to an automated process, NOR that is it NOT merely automating something that was done previously by hand as explained by the Examiner in the previous Office action.

13. Regarding section 13 of the previous Office action (35 U.S.C. 103), Applicant's arguments on page 16 are unpersuasive as Miller is indeed directed to processing orders for individual items (pizza, coke, cheesy bread, chicken wings) and bundling these items into one bag or one car or one order to be delivered to the customer and processing the order by delivering the items to the customers home.

14. Regarding section 14 of the previous Office action (35 U.S.C. 103), Applicant's arguments on page 17 are unpersuasive as Green is indeed directed to processing orders for individual items as set forth in the previous Office action.

**The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.**

***Claim Rejections - 35 USC § 112***

15. Claims 1 and 19 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

16. Claims 1 and 19 are vague, indefinite and incomplete in what all is meant by and encompassed by the phrase "an order tangibly stored as instructions..." because it appears that the order is stored as instructions on the computer readable medium instead of the method being tangible stored on a computer readable medium. Since the claims can be interpreted at least two different ways the metes and bounds of the claim are undefined.

17. As set forth above sections 5.a., 6.a. and 6.c.-6.f. from the previous Office action are maintained and incorporated herein.

***Claim Rejections - 35 USC § 101***

18. As set forth above section 7 from the previous Office action is maintained and incorporated herein.

***Claim Rejections - 35 USC § 102***

19. As set forth above section 9 from the previous Office action are maintained and incorporated herein.

***Claim Rejections - 35 USC § 103***

20. As set forth above sections 12, 13 and 14 from the previous Office action are maintained and incorporated herein.

***Conclusion***

21. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.


22. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Daniel L. Greene Jr. whose telephone number is (571) 272-6876. The examiner can normally be reached on Mon-Thur.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James P. Trammell can be reached on (571) 272-6712. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

23. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

DIG  
2007-07-19

  
ELLA COLBERT  
PRIMARY EXAMINER